

**COMMONWEALTH OF KENTUCKY
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
FILE NO. BFA-23458-037
PERMIT NO. 830-8003
NON-COMPLIANCE NO. 110266
CESSATION ORDER NO. 010753**

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

PLAINTIFF

VS.

FINAL ORDER

GREEN COAL COMPANY, INC.

DEFENDANT

* * * * *

THIS MATTER is before the Secretary on the Report and Recommendation of the Hearing Officer. Having considered the Hearing Officer's Report and Recommendation and any exceptions and responses thereto, and being otherwise sufficiently advised, it is hereby ORDERED AND ADJUDGED as follows:

1. The Hearing Officer's Report and Recommendation filed on _[5/9/00]_____, 2000, is hereby incorporated by reference as if fully stated herein. The recommended Findings of Fact and Conclusions of Law set out in the Hearing Officer's Report are ADOPTED by reference as the Findings of Fact and Conclusions of Law for this Final Order.

2. Defendant is in default and has waived its right to an administrative hearing concerning this matter.

3. As stated in the final order entered in File No. PAC-23458, Defendant violated Kentucky's surface mining laws as cited in Notice of Non-Compliance No. 110266 and Cessation Order No. 010753 and has not abated those violations on Permit 830-8003.

4. Permit No. 830-8003 has been previously revoked by a Final Order of the

Secretary.

5. The performance bond held on Increment No. 4 of Permit No. 830-8003 is FORFEITED, that bond being Surety Bond No. 240-153, issued by Seaboard Surety Company in the amount of seventy-five thousand four hundred dollars (\$75,400).

6. The Defendant is INELIGIBLE to receive another coal mining permit or begin future mining operations in Kentucky until it has complied with the requirements of Kentucky's surface mining laws.

7. The Defendant SHALL ABATE the violations cited in Notice of Non-Compliance No. 110266, reclaim the permit to permanent program standards, and achieve the post mining land use as approved in the permit.

8. This is a FINAL and APPEALABLE Order.

ENTERED this the _____ day of _____, 2000.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

 /s/ [6/9/00]
JAMES E. BICKFORD, SECRETARY

APPEAL RIGHTS

In accordance with the provisions of KRS 350.0305 and KRS 350.032, any person or party aggrieved by a Final Order of the Secretary resulting from a hearing may obtain a review of the Final Order by filing in Circuit Court a Petition for Review. Such petition must be filed within thirty (30) days after the entry or rendition of the Final Order, and a copy of the Petition must be served upon the Cabinet.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing FINAL ORDER was, on this ____ day of _____, 2000, mailed by first class mail, postage prepaid to:

GREEN COAL COMPANY, INC.
THOMAS E. GREEN, AGENT
6288 CHANEY ROAD
SPOTTSVILLE, KENTUCKY 42458

GREEN COAL COMPANY, INC.
THOMAS E. GREEN, AGENT
P.O. BOX 841
OWENSBORO, KENTUCKY 42302

SEABOARD SURETY COMPANY
BURNT MILLS ROAD
ROUTE 206
BEDMINSTER, NEW JERSEY 07921

And hand delivered to:

Hon. Jennifer Cable Smock
Office of Legal Services
Fifth Floor, Capital Plaza Tower
Frankfort, Kentucky 40601

DOCKET COORDINATOR

DISTRIBUTION:

JCT
LTS
MADISONVILLE REGIONAL OFFICE
FIELD SERVICES
PAC-23458
JK/ORDER

U:\common\docs\bfa\23458.R&R

**COMMONWEALTH OF KENTUCKY
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
FILE NO. BFA-23458-037
PERMIT NO. 830-8003
NON-COMPLIANCE NO. 110266
CESSATION ORDER NO. 010753**

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

PLAINTIFF

VS. HEARING OFFICER'S REPORT AND RECOMMENDATION

GREEN COAL COMPANY, INC.

DEFENDANT

* * * * *

THIS MATTER is before the undersigned following the failure of the Defendant, Green Coal Company, Inc. ("Green" or "Defendant"), to appear at a Show Cause Hearing scheduled for April 25, 2000. Based upon the record of this matter, the Hearing Officer hereby makes the following Findings of Fact, Conclusions of Law and Recommendations.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On January 31, 2000, the Natural Resources and Environmental Protection Cabinet filed an Administrative Complaint against Green in which it sought, among other things, forfeiture of the performance bond associated with Increment No. 4. Increment No. 4 is secured by Surety Bond No. 240-153, issued by Seaboard Surety Company in the amount of seventy-five thousand four hundred dollars (\$75,400). The permit has been revoked in a prior action and Increment Nos. 1 and 2 have previously been forfeited. The bond for Increment No. 3 has been released.

2. The Cabinet's Administrative Complaint alleged that the fact of the violations

cited in Notice of Non-Compliance No. 110266 and Cessation Order No. 010753 had been affirmed by the Secretary in Final Order entered on May 29, 1997, in File No. PAC-23458 and that as of the date the Administrative Complaint was filed, the violations had not been abated.

3. As evidenced by the files maintained by the Office of Administrative Hearings, the Administrative Complaint, Summons and Order setting prehearing conference were sent to Green by certified mail, postage prepaid and return receipt requested on February 10, 2000, to the permit address and the address listed for Green with the office of the Secretary of State. These documents were returned to the Cabinet as undeliverable on February 15, 2000.

4. The Administrative Complaint and Administrative Summons and Order were properly served on Defendant in accordance with 405 KAR 7:091, Section 5(1)(c).

5. The Defendant failed to file an Answer or responsive pleading as required by 405 KAR 7:092, Section 5(3)(b).

6. A Prehearing Conference was held on March 29, 2000. The Hon. Jennifer Cable Smock represented the Cabinet. The Defendant failed to appear. Since the Defendant did not appear, the Cabinet requested that the Hearing Officer enter an Order for Defendant to appear and show cause as to why it should not be held in default.

7. On March 31, 2000, a Show Cause Order was entered and served ordering the Defendant to appear on April 25, 2000, and show cause why it should not be deemed to have waived its right to an administrative hearing. The Order for Defendant to Appear and Show Cause was properly served on the Defendant in conformity with the Cabinet's regulation governing service of documents or other pleadings. 400 KAR 1:030, Section 2.

8. On April 25, 2000, a Show Cause Hearing was held. The Hon. Jennifer Smock represented the Cabinet. No appearance was made on behalf of the Defendant to show cause

why the Defendant should not be deemed to have waived its right to a hearing under 405 KAR 7:092, Section 5(5).

9. Pursuant to 405 KAR 7:092, Section 5, if the order to show cause is not satisfied as required, the Hearing Officer shall recommend to the Secretary the entry of a final order in conformity with the relief requested by the Cabinet in its Administrative Complaint.

10. Under the provisions of 405 KAR 7:092, Section 5(5), the Defendant has admitted the allegations made by the Cabinet in its Administrative Complaint and failed to demonstrate why a Secretary's Order adverse to its interests should not be entered in accordance with the provisions of 405 KAR 7:092 granting the Cabinet the relief it requested in its Administrative Complaint.

RECOMMENDATIONS

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearing Officer recommends that the Secretary enter the recommended Order, attached and incorporated herein, granting the Cabinet the relief requested in the Administrative Complaint.

SO RECOMMENDED, this _____ day of _____, 2000.

_____/s// [5/9/00]
JANET THOMPSON
HEARING OFFICER
Office of Administrative Hearings
35-36 Fountain Place
Frankfort, Kentucky 40601
TELEPHONE: (502) 564-7312

EXCEPTIONS AND RESPONSE RIGHTS

Pursuant to KRS 350.0301 any party may file exceptions to this Report and Recommendation within fourteen (14) days of service of this Report. A party may file a Response to any Exceptions within (21) days of service of this Report. The Secretary will then consider this report, exceptions, response and recommended order and decide the case.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing HEARING OFFICER'S REPORT AND RECOMMENDATION AND PROPOSED FINAL ORDER was, on this ____ day of _____, 2000, mailed by first class mail, postage prepaid to:

GREEN COAL COMPANY, INC.
THOMAS E. GREEN, AGENT
6288 CHANEY ROAD
SPOTTSVILLE, KENTUCKY 42458

GREEN COAL COMPANY, INC.
THOMAS E. GREEN, AGENT
P.O. BOX 841
OWENSBORO, KENTUCKY 42302

SEABOARD SURETY COMPANY
BURNT MILLS ROAD
ROUTE 206
BEDMINSTER, NEW JERSEY 07921

And hand delivered to:

Hon. Jennifer Cable Smock
Office of Legal Services
Fifth Floor, Capital Plaza Tower
Frankfort, Kentucky 40601

DOCKET COORDINATOR

DISTRIBUTION: JCT LTS
MADISONVILLE REGIONAL OFFICE FIELD SERVICES

U:\common\docs\bfa\23458.R&R

